neglects.....to maintain his wife.....a District Court or Police Court, upon due *proof thereof*, may order....." The words "upon due proof thereof" must, I think, mean: "Upon proof that defendant (a) *neglects* to (b) *maintain* his (c) wife." I therefore hold that the Legislature has, by necessary implication, empowered and required District Courts and Police Courts to adjudicate on the status of a complainant under section 38 (1) *vis-a-vis* a defendant, and to declare whether such persons *are* man and wife.

I find that complainant was born in Perak, and defendant in Selangor, and that they are of Chinese descent, and that complainant is a Buddhist, and that defendant is a non-Christian.

I find that, in February, 1923, there was a ceremony performed between them in Singapore, and that they each professed in public at that ceremony that they took the other in matrimony, and that they signed what purports on its face to be a marriage document.

The nearest case in point which I have come across is that of *Cheang Thye Phin and others* v. *Tan Ah Loy*, L.R. (1920) A.C., page 369. In Westlake's "Private International Law," the Edition of 1922, at page 56, this case is briefly summarised thus: "A Chinese marriage has been recognised for Chinese subjects in Penang, though no ceremony took place, because the *lex loci actus* required no forms." I have read the full report of that case, and the head-note in the Law Reports is, in my opinion, a much more satisfactory synopsis of what was actually decided by the Privy Council in that case. The head-note reads: "According to the Chinese law of marriage, which is applied in Penang in the case of Chinese residents, a Chinaman may have secondary wives, (sometimes called *t'sips*), who have the status of wives, and whose children are legitimate. Although some sort of ceremony is usual when a '*t'sip*' is taken, proof of the performance of a ceremony is not essential to establish the relationship."

The facts of the Privy Council case are very different from the facts of the present case, and the judgment in the Privy Council case must, of course, be read in the light of the facts in that case. Yet, in the present case, it may be noted that the complainant claims merely the status of a wife. It is true that, in examination, complainant averred that she married defendant on the footing of being his first (i.e. his principal) wife. In my opinion, on the facts of this case, that Court would be justified, in virtue of the Privy Council decision, in holding that the complainant, by virtue of the ceremony referred to, acquired thereby at least the status of a secondary wife. And, among Chinese, a secondary wife is a full wife, though subordinate in status to a principal wife. And I do not decide that complainant did *not* become a principal wife, by virtue of the ceremony referred to. That question does not arise at present.

That is, I decide that this Court has jurisdiction, and I declare that complainant is the wife of the defendant, within the meaning of section 38 (1) of the Minor Offences Ordinance.

And I can only express the hope that the Legislature will see its way to pass legislation on the subject of Chinese marriages.

Solicitors for Complainant:

Braddell Brothers.

Solicitor for Defendant: *M. V. Pillai.*

[ORIGINAL CIVIL JURISDICTION]

HUGGARD, C.J.

August 11, 1933.

RE SASSOON EZEKIEL.

[SINGAPORE BANKRUPTCY No. 678 of 1931]

Order for payment of costs "by the Official Assignee of the property of Sassoon Ezekiel, a bankrupt"—Writ of Seizure and Sale issued against Official Assignee on non-payment.

Where a party who was a stranger in bankruptcy proceedings had obtained an order for costs against the Official Assignee of the property of a named bankrupt and upon the Official Assignee making default in payment, a Writ of Seizure and Sale was issued against the Official Assignee:—

Held, that a Writ of Seizure and Sale properly lay against the Official Assignee in the bankruptcy matter.

In this case the Official Assignee on the 29th March, 1932, moved the Court to declare void and or to set aside a conveyance by a Bankrupt to his wife made shortly before the Bankruptcy. On the 24th January, 1933, the Court made the following order on the Motion, namely:—"That the said Motion be refused with costs to be taxed and paid by the Official Assignee of the property of the said Sassoon Ezekiel, a bankrupt."

The 1st Respondent, Rachael Sassoon taxed her costs under the said Order. These were certified by the Registrar on the 27th April, 1933, at the sum of $593.04 which amount was subsequently reduced to $446.44 by a set-off for reasons not material for the purpose of this report.

The Official Assignee did not pay such costs and thereupon the 1st Respondent caused a Judgment Debtor Summons to be issued under Sections 658 of the Civil Procedure Code to examine him orally respecting his ability to pay.

The Judgment Debtor Summons came on for hearing before Mr. Justice Mills on the 16th May, 1933, when the Assistant Official Assignee appeared on behalf of the Official Assignee. The learned Judge made no order on the Summons.

Following the above proceedings, Judgment-creditor issued a Writ of Seizure and Sale for enforcement of the order for payment of costs to her and the Sheriff seized a motor car belonging to the Official Assignee personally.

The Official Assignee moved the Court for an Order that (a) The Writ of Seizure and Sale be set aside and cancelled and (b) execution under the Order of the 7th February, 1933 be stayed until further order.

The Motion came on for hearing before Huggard, C. J.

Dr. Withers-Payne for the Official Assignee, on the application to set aside the writ relied upon the Judgment of Mr. Justice Mills (reported above), as a decision that no proceedings by way of execution could be brought to enforce an order in Bankruptcy.

The application for stay of execution was supported by an affidavit by the Official Assignee, the material parts of which are as follows:—

> "On the 21st of April, 1933, the Official Assignee commenced an action against Rachael Sassoon Ezekiel for indemnity in the sum of $5,500 and other expenses liabilities and costs as more particularly mentioned in the Statement of Claim."

Dr. Withers-Payne cited no authorities but asked the Judge, in the exercise of his discretion to stay execution until the hearing and determination of the last abovementioned suit, which, if successful, would result in the Official Assignee having a cross claim against Rachael Sassoon Ezekiel which he would seek to set off against her present judgment for costs.

Battishill for the Respondent.

The order of the 7th February, 1933 directing Rachael Sassoon Ezekiel's costs of the Official Assignee's motion to be paid by the Official Assignee of the property of Sassoon Ezekiel was an order rendering the Official Assignee (namely Mr. Charles Wilson) personally liable. It was not necessary for the order to state that the Official Assignee must pay personally because that is the natural effect of the order in the absence of words stating that the payment is to be out of the property of the Bankrupt. The Official Assignee's liability in respect of costs is the same as that of an Official Receiver and of a Trustee in Bankruptcy in England. This is evident from the following rules which protect him from costs when he is defendant; and when he is plaintiff provide for his indemnity in respect of the costs which he has had to pay. Compare Bankruptcy Rule 70 (2) with English Rule 96 (3). (All references herein to the English Rules are to the Rules of 1915. Williams 14th Ed. p. 507, *et seq.*). Bankruptcy Rule 187 with the English Rule 263, Bankruptcy Rule 278 with the English Rule 326. See also *Ex parte Angerstein*, 9 Ch. App. 479. *In re Arthur Williams & Co.*, (1913) 2 K.B. 88.

The Judgment of Mills, J. above referred to was based on the finding that the Judgment Debtor Summons was a summons in a pending cause or matter, that is to say, a Summons *inter partes* in this Bankruptcy matter, that Rule 289 of the Bankruptcy Rules prevents proceedings by way of a Judgment Debtor Summons under Chapter XXX of the Civil Procedure Code in a Bankruptcy matter. By this Judgment the Court did not decide as to how Orders of the Court in Bankruptcy are enforced and the Judgment cannot be regarded as a decision in regard to this question. Bankruptcy Rule 69 which reads "every order of the Court may be enforced as if it were a judgment of the Court to the same effect" enables the Court to enforce an Order in Bankruptcy in the same manner as any Judgment of the Supreme Court. Compare with the English Bankruptcy Rule 91. Under Section 2 of Ordinance No. 44 (Bankruptcy) the expression "the Court" is defined to mean the Court having jurisdiction in Bankruptcy under this Ordinance. There is no Court of Bankruptcy but Bankruptcy business is part of the jurisdiction of the Supreme Court—(Section 86 (1) of Ordinance No. 44). Therefore the Supreme Court enforces its own orders in Bankruptcy in the same way as it enforces a Judgment of the Supreme Court. Every proceeding in the Supreme Court in a Bankruptcy matter is by motion and the decision of the Court is in the form of an Order and is not a Judgment.

Bray, J. in *Savill* v. *Dalton*, (1915) 3 K.B. 174 at p. 189, referring to an Order in Bankruptcy of the Reading County Court said "As there are so far as I am aware no 'Judgments in Bankruptcy' a Judgment of the Court means an ordinary Judgment of the Reading County Court." This is direct authority (if authority be needed) for saying that the Judgment referred to in Section 86 (1) means a Judgment of the Supreme Court in its general jurisdiction. The Court derives its power to enforce Judgments and Orders from its general jurisdiction and the machinery for so doing is contained in Chapters XXVIII and XXIX of the Civil Procedure Code. These Chapters of the Civil Procedure Code apply to the enforcement of an order in Bankruptcy as coming within the words "save as provided by these rules or rules amending them contained in Bankruptcy Rule 289."

The Judgment of Mills, J. can perhaps be supported by reason of the fact that the procedure contained in Chapter XXX of the Civil Procedure Code is not a procedure for enforcing an Order by execution but a procedure for punishing a Judgment Debtor for contempt of Court. It is similar to the procedure under the Debtors' Act of 1869. It is not a procedure for recovering the judgment debt out of the debtor's assets. See Judgment of Bray, J. *supra* at p. 192, "Punishment for contempt of Court is not enforcement of an Order. It is punishment for disobedience."

It may therefore be said that Chapter XXX is not made applicable under the words of Bankruptcy Rule 289 above referred to although Chapters XXVIII and XXIX are applicable. It is submitted with deference that the Judgment of Mills, J. was not correct. *Savill* v. *Dalton (supra)*, was not cited to him. It is a Judgment of a Court of co-ordinate jurisdiction and the Court is not bound to follow it. Rule 126 of the English Bankruptcy Rules provides that writs of execution shall issue from the proper department of the Central Office and all proceedings thereon and in relation thereto shall be regulated as nearly as may be by the rules of the Supreme Court for the time being in force. For forms of writs of execution see Annual Practice 1933, p. 2684. This Rule is not reproduced in the local Bankruptcy Rules but the jurisdiction of the Court does not depend upon this Rule. English Rule 126 does not apply to the enforcement of orders of a County Court exercising bankruptcy jurisdiction but a County Court enforces its orders in bankruptcy in the same way as a judgment under its ordinary jurisdiction. See *Savill* v. *Dalton (supra)* and particularly the Judgment of Bray, J. Moreover the High Court in England enforces orders in Bankruptcy by means of equitable execution to which Rule 126 has no application—see *In re Goudie*; *Exparte Official Receiver*, (1896) 2 Q.B. 481.

It is submitted that the Supreme Court here can also enforce orders in bankruptcy by means of equitable execution under the Supreme Court's equitable jurisdiction.

As regards the stay of execution there is no authority for the proposition that the Court will stay execution under a Judgment or order for costs by reason of the fact that the party liable to pay has commenced a separate action against the party entitled to the costs which if successful would result in a cross claim. There are no equitable grounds upon which the Official Assignee can ask the Court to exercise a discretion in his favour. The Court will not defeat a solicitor's lien for costs except under special circumstances.

He also referred to *re Harrald* v. *Walford*, 51 L.T. N.S. 441, *Grant* v. *The Banque Franco-Egyptienne*, 1878 Vol. III Common Pleas Division, p. 202 and *Edward* v. *Hope*, 14 Q.B.D., p. 922.

Dr. Withers-Payne, in reply, admitted that he was precluded from arguing that the Rules were *ultra vires* by the decision of the House of Lords in the case of *Institute of Patent Agents and others* v. *Lockwood*, (1894) A.C. 347 and he confined himself to the application for a stay of execution.

HUGGARD, C. J. delivered an oral judgment to the following effect:—

A writ of seizure and sale properly lies against the Official Assignee in such a matter as this now before the Court and I see no reason to set it aside. I have been asked to exercise a discretion in favour of the Official Assignee and to order a stay of execution. I can see no reason to do so. The only reason for a stay of execution appears to be that the Official Assignee is claiming a larger sum against Mrs. Sassoon Ezekiel in another action which is pending. I can see no reason why Mrs. Sassoon Ezekiel should not receive payment of her costs and I refuse a stay. The motion will therefore be dismissed with costs.

Motion dismissed.

Solicitors for Judgment-creditor:

Sisson & Delay.

Solicitors for Official Assignee:

Drew & Napier.